

Attorney Docket T8466250US

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
CRUPI, Frank ) : Examiner: R. W. Addie  
Application No.: 09/917,824 ) : Group Art Unit: 3671  
Filed: 07/31/2001 ) : Allowed:  
For: METHOD OF IN-SITU ) June 2, 2003  
REJUVENATION OF ASPHALT )  
PAVEMENT )

11/3/03  
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**OFFICE OF PETITIONS**

The Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Attention: Office of Petitions**

**PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW NOTICE OF ABANDONMENT**

Sir:

Applicant respectfully requests the Commissioner to restore the above-identified abandoned application to pending status on the ground that Applicant properly submitted the required Response to the Official Action Under 37 C.F.R. 1.312, as evidenced by the attached photocopy of the Auto-Reply Facsimile Transmission showing receipt of the Response to the Official Action, dated February 18, 2003.

**FACTS**

1. An Official Action was mailed on September 18, 2002, defining a shortened statutory deadline for reply of December 18, 2002.

On February 18, 2003, the Applicant filed the following:

- (a) a Transmittal form;
- (b) An Associate Power of Attorney or Agent form;
- (c) a Petition for Extension of Time Under 37 CFR 1.136(a) (in duplicate), requesting an extension to the Response deadline to February 18, 2003; and

(d) a Response to the Official Action.

Copies of each of these documents are attached as Appendix A. The total number of pages of these documents is 11.

2. These documents were transmitted to the United States Patent and Trademark Office by way of facsimile transmission. In this respect, please find attached a copy of the relevant facsimile cover page, containing a Certificate of Facsimile Transmission executed by the undersigned, as Appendix B. The confirmation copy of the facsimile transmission is also attached as Appendix C.

The fax cover page identified the total number of pages being transmitted as being "12", including the cover page. The facsimile confirmation confirms the transmission of said 12 pages.

3. As well, on February 18, 2003, an Auto-Reply Facsimile Transmission was received by the undersigned at the facsimile number from which the subject response was transmitted. A copy of the Auto-Reply Facsimile Transmission is attached as Appendix D. Notably, the Auto-Reply Facsimile Transmission confirms the receipt of 12 pages from the fax transmission identified on the "receipt" cover page appearing on the Auto-Reply Facsimile Transmission, which corresponds to the facsimile cover page referred to in paragraph 2.

**RELIEF REQUESTED**

The Commissioner is respectfully requested to restore the above-identified abandoned application to pending status since the Applicant has properly submitted the Response to the Official Action.

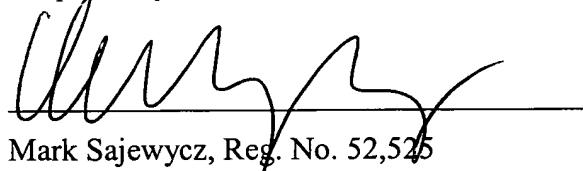
**FEE**

The Commissioner is hereby authorized to charge Deposit Account No. 07-1750 for any petition fee which may be due. However, since it is believed that the holding of abandonment is the

result of circumstances not attributable to any fault of Applicant or his representatives, it is respectfully suggested that no fee is due.

Applicant's undersigned attorney may be reached in our Toronto office by telephone at 416-862-5795. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Sajewycz".

Mark Sajewycz, Reg. No. 52,525

Agent for the Applicant

Gowling Lafleur Henderson LLP  
Commerce Court West, Suite 4900  
Toronto, Ontario M5L 1J3  
Canada

TOR\_LAW\5377341\_1

**APPENDIX A**

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/917,824
Filing Date	07/31/2001
First Named Inventor	Crupi
Art Unit	3671
Examiner Name	R.W. Addie
Attorney Docket Number	T8466250US

**ENCLOSURES (Check all that apply)**

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<i>response to Office Action Associate Power of Attorney or Agent</i>
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	<b>Remarks</b>	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

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JUN 04 2003

**OFFICE OF PETITIONS****\*26912\*****SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual	26912
Signature	<i>Murk Szwarcz</i> (Murk Szwarcz Reg. No. P52,525)
Date	Feb. 18/03

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: \_\_\_\_\_

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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Associate Power Of Attorney Or Agent (37 CFR 1.34)  
(For Representation Related To A Patent Application)

Docket No.  
T8466250US

In Re Application Of:

CRUPI, Frank

Serial No.  
09/917,824

Filing Date  
07/31/2001

Examiner  
R. W. Addie

Group Art Unit  
3671

Invention:

METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Please recognize the following as    Associate Attorney    Associate Agent   in this application.

Name: Mark W. Sajewycz

Reg. No.: P52,525

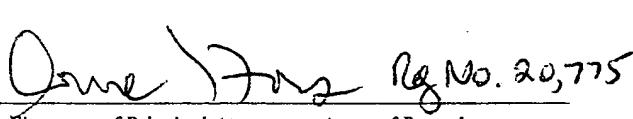
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Toronto, Ontario  
M5L 1J3

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JUN 04 2003

OFFICE OF PETITIONS

Tel. No. 416-862-5795

  
Reg. No. 20,775

Signature of Principal Attorney or Agent of Record

Dated: Feb. 18/03

Registration Number & Address of Principal Attorney or Agent of Record

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Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

**PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)**  
**(Small Entity)**

Docket No.  
**T8466250CA**

**In Re Application Of:**

**CRUPI, Frank**

Serial No.	Filing Date	Examiner	Group Art Unit
09/917,824	07/31/2001	R. W. Addie	3671

#### Invention:

## METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

**TO THE ASSISTANT COMMISSIONER FOR PATENTS:**

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of 09/18/2002 in the above-identified application.

The requested extension is as follows (check time period desired):

One month       Two months       Three months       Four months       Five months

from: 12/18/2002 *Date* until: 02/18/2003 *Date*

A verified statement of small entity status as a small entity under 37 CFR 1.27:

is enclosed.  
 has already been filed in this application.

The fee for the extension of time is \$205 and is to be paid as follows:

A check in the amount of the fee is enclosed.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 07-1750  
A duplicate copy of this sheet is enclosed.

If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 07-1750 A duplicate copy of this sheet is enclosed.

Dated: Feb. 18/03

Mark w. Sajewycz  
Reg No. PSZ, 525

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***Signature of Person Mailing Correspondence***

*Typed or Printed Name of Person Mailing Correspondence*

cc:

**PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)  
(Small Entity)**

Docket No.  
T8466250CA

**In Re Application Of:**

**CRUPI, Frank**

Serial No.	Filing Date	Examiner	Group Art Unit
09/917,824	07/31/2001	R. W. Addie	3671

#### Invention:

## METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

**TO THE ASSISTANT COMMISSIONER FOR PATENTS:**

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of 09/18/2002 in the above-identified application.

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One month       Two months       Three months       Four months       Five months

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A duplicate copy of this sheet is enclosed.

If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 07-1750 A duplicate copy of this sheet is enclosed.

Dated: Feb. 18/03

Mark W. Sajewicz  
Reg. No. P52,525

I certify that this document and fee is being deposited on [REDACTED] with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

*Signature of Person Mailing Correspondence*

***Typed or Printed Name of Person Mailing Correspondence***

CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

File No. T8466250US

February 18, 2003

In re the Application of

**Applicant:** Crupi  
**Serial No.:** 09/917,824  
**Filing Date:** 07/31/2001  
**Title:** **METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT**  
**Art Unit:** 3671  
**Examiner:** R. W. Addie

Commissioner of Patent & Trademarks  
Crystal Plaza 2, Lobby Level  
2011 Jefferson Davis Highway  
Arlington, Virginia 22202

Dear Sir:

AMENDMENT

Please amend the application as follows:

In the Claims:

Please amend claim 3 by replacing claim 3 with the following Amended Claim. A copy of the Marked-Up Claim is attached for the Examiner's convenient reference.

Amended Claim

3. (Amended) The method as claimed in claim 2, wherein, during step (e), the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

## REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1 to 17 are pending in the application.

Claims 1, 16, and 17 are independent.

Claim 3 has been amended for purposes of consistency with claim 1, from which claim 3 depends.

## CLAIMS REJECTIONS

### 1. Claims Rejections Under 35 USC § 112

Claims 3 to 8 have been rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant refers to as the invention. In particular, with respect to claim 3, the Examiner has objected to the limitation introduced with respect to Step (d) in claim 1. In response, the Applicant submits that claim 3 has been amended such that the subject limitation pertains to Step (e) and not Step (d). As such, the Applicant submits that claim 3 is sufficiently definite.

Claim 4 has been also rejected under 35 USC § 112, second paragraph, for failing to specifically recite an actual method step. In particular, the Examiner has objected to the fact that the limitation has been introduced with respect to the “backhoe apparatus” recited in claim 1. In response, the Applicant submits that there is no basis for such a rejection. Claim 1 specifically recites, in Step (e), “moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus.” As such, it is clear that the “backhoe apparatus” is an element of the invention as claimed in claim 1. Claim 4 merely introduces a limitation with respect to an element specifically recited in claim 1. As such, the Applicant submits that claim 4 is a proper limitation with respect to an element specifically recited in claim 1 for performing “the moving” action recited in Step (e).

With respect to claims 5 to 8, because claims 5 to 8 are directly or indirectly dependent on claims 3 or 4, the Applicant further submits that claims 5 to 8 are sufficiently definite, and therefore, comply with 35 USC § 112, second paragraph.

2. Claims Rejections Under 35 USC § 103

The Examiner has rejected claims 1 to 17 under 35 USC § 103 (a) as being unpatentable over Cutler, in view of Smith et al. and Strunk. In particular, the Examiner appears to be of the view that Strunk teaches a roadway construction apparatus comprising a pick-up conveyor (20) having a backhoe apparatus (34) for feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway, and that such teaching, in combination with the teachings in Cutler and Smith et al, render the claimed invention unpatentable.

-- In response, the Applicant submits that claims 1 to 17 are patentable over the cited references. In particular, the Applicant submits that the combination of Cutler, Smith et al., and Strunk do not result in the combination of elements comprising the claimed invention in claim 1.

Claims 1 to 15

Claim 1 covers a method of effecting in-situ rejuvenation of an asphalt paved surface with an asphalt rejuvenating apparatus including a pick-up conveyor and a backhoe apparatus, wherein the asphalt paved surface includes an obstruction disposed therein, comprising the steps of:

- (a) heating the asphalt paved surface to form heated asphalt;
- (b) scarifying the heated asphalt to form a scarified intermediate
- (c) milling the scarified intermediate to form a milled intermediate;
- (d) blending rejuvenating fluid with the milled intermediate to form a blended intermediate, wherein a portion of the blended intermediate is deposited proximate the obstruction; and

- (e) moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus.

The Applicant submits that Strunk does not teach a person of ordinary skill in the art to use a backhoe apparatus (34) to feed roadway construction materials into a pick-up conveyor for recycling into the prepared roadway.

In this respect, the Applicant submits that Strunk's backhoe apparatus is not intended to effect removal of existing roadway construction material for subsequent recycling into a prepared roadway. Rather, Strunk's backhoe apparatus is intended for removal of non-roadway construction materials, such as earth and vegetation, to create the necessary space for roadway construction. Strunk's backhoe apparatus (34) is described in Strunk at column 4, lines 33 to 35, as being "used to remove overburden not accessible to scoop 20." The use of Strunk's backhoe in removing non-roadway construction materials is further reinforced at column 4, lines 55 to 61:

"Bucket assembly 34 can be used to excavate an overlying area to the side of the apparatus as, for instance, when profiling a hillside and to take the material removed and place it into the scoop 20. Similarly, bucket assembly 34 can be used to excavate a trench below the level of the apparatus and to lift the material into the scoop 20."

The Applicant submits that none of the material excavated by the backhoe assembly is of a roadway construction material quality. This is apparent in Strunk at column 9 between lines 1 - 9:

"Organic material such as tree stumps is not desirable in a road bed underlayment. Usually all stumps and other organic material are removed before road work begins. The present apparatus can remove small stumps and logs with the articulated bucket assembly. The bucket assembly and the scoop in conjunction with one another can uproot small stumps and the bucket assembly can lift these stumps out of the path of the present apparatus."

Rather than using the excavated material for purposes of road construction, material excavated by Strunk's backhoe apparatus is intended for disposal. Disposal is specifically contemplated in Strunk at column at lines 62 to 68:

"The apparatus may also function as a front-end loader. In this operating mode, the conveyor is stopped. Overburden, rock or unwanted material is collected in the scoop. The scoop is raised

and the vehicle is moved to the location where the unwanted material is to be deposited. The scoop is rotated so that the cutting edge is lowered, thus depositing the material."

Notably, Strunk's backhoe apparatus is, at no time, relied upon for "feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway". Rather, roadway construction materials are scarified and collected by Strunk's scoop for subsequent processing and, ultimately, recycling. Recycling of existing asphalt road surfaces into a prepared roadway in this manner is specifically described in Strunk at column 9, lines 10 to 22:

"Another especially beneficial use of the present apparatus is in renewing asphaltic road surfaces.

Generally, the old road surface must be broken up and hauled away. This necessitates laying a new base for the new pavement. Because the rock crusher is adjustable on its output side for size, it may be set to produce crushed old asphalt pavement fine enough for the new base. Chipper, breaker-type teeth are mounted on the leading edge of the scoop. The scoop simultaneously rips and breaks up the old road surface into pieces small enough to be conveyed to the rock crusher. The rock crusher reduces the size of the old pavement small enough to be used as underlayment for the new road surface."

Because Strunk's backhoe apparatus is not provided for "feeding roadway construction material sin the pick-up conveyor for recycling into the prepared roadway", the Applicant submits that Strunk's backhoe combined with the teachings of Cutler, and Smith et al., does not disclose all of the elements of the invention as claimed in claim 1. As such, the Applicant submits that the invention as claimed in claim 1 is patentable over the cited references.

With respect to claims 2 to 15, claims 2 to 15 are directly or indirectly dependant on claim 1. As such, and relying on the foregoing reasons, the Applicant submits that claims 2 to 15 are patentable over the cited references.

#### Claims 16 and 17

With respect to claim 16, claim 16 claims, *inter alia*, the step of "... moving the milled intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus."

With respect to claim 17, claim 17 claims, *inter alia*, the step of "... moving the first intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus."

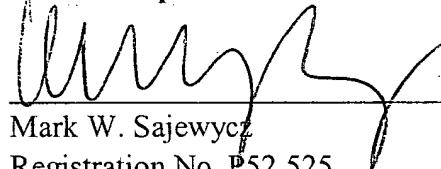
The Applicant submits that Strunk does not contemplate using his backhoe apparatus for the purpose of feeding roadway construction to a pick-up conveyor. As such, and relying on the foregoing reasons with respect to claim 1, the Applicant submits that claims 16 and 17 are patentable over the cited references.

The Commissioner is hereby authorized to charge any fees, including fees for the additional claims, which may be required to Deposit Account No. 07-1750.

Favourable consideration is earnestly solicited and, if any issues remain outstanding, the Examiner is invited to telephone the undersigned agent for the applicant at 416-862-5795.

Respectfully submitted

**Frank Crupi**



---

Mark W. Sajewycz  
Registration No. P52,525

GOWLING LAFLEUR HENDERSON LLP  
Commerce Court West, Suite 4900  
Toronto, Ontario  
M5L 1J3

MWS:pg  
TOR\_LAW\5275710\_1  
February 18, 2003

MARKED-UP CLAIM

3. The method as claimed in claim 2, wherein, during step (e) [(d)], the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

APPENDIX B

**GOWLINGS**

Incorporating the practice of SMITH LYONS

Suite 4900  
Commerce Court West  
Toronto, Ontario  
Canada M5L 1J3  
Telephone (416) 862-7525  
Facsimile (416) 862-7661  
[www.gowlings.com](http://www.gowlings.com)

**Mark Sajewycz**  
Direct (416) 862-5795  
[mark.sajewycz@gowlings.com](mailto:mark.sajewycz@gowlings.com)

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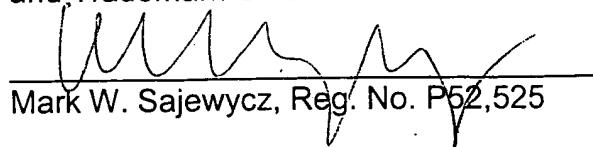
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Date Feb. 18/03  
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**APPENDIX C**

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Toronto, Ontario  
Canada M5L 1J3  
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[www.gowlings.com](http://www.gowlings.com)

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Direct (416) 862-5795  
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Staff Code	1616	

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**APPENDIX D**

TO:Auto-reply fax to 4168627661 COMPANY:

## Auto-Reply Facsimile Transmission



TO: Fax Sender at 4168627661

Fax Information

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2/18/03 4:30:57 PM [Eastern Standard Time]

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<small>Mark Sajewycz Direct (416) 862-5785 <a href="mailto:mark.sajewycz@gowlings.com">mark.sajewycz@gowlings.com</a></small>					
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<small> Mark W. Sajewycz, Reg. No. P62,525      Date: February 18, 2003</small>					
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